HIGH COURT OF UTTARANCHAL AT-NAINITAL.

Reserved

Writ Petition No. 471 (M/B of 2003)

Nadeem Samsi S/o Mutafazil U1 Haq,
R/o Weldraf Hotel,
Mallital, Nainital district Nainital. …. Petitioner.

Vs.

Executive Officer, Nagar Palika Parishad, Nainital,
And two others. …. Respondents.

K.N. Joshi, Ld. Advocate, for the petitioner.
Mr. Sharad Sharma, learned Advocate for Municipal Board.

Coram:- **Hon'ble M.M. Ghildiyal, J.**
Hon'ble Rajesh Tandon, J.

(Delivered by Hon'ble Rajesh Tandon, J.)

Heard learned counsel for the parties.

By means of this writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents not to evict the petitioner from the present place, which has been provided by the Nagar Palika Parishad, Nainital till the alternative permanent place in not provided to him. Further with a prayer to issue a writ order or direction in the nature of mandamus directing the respondents to provide permanent alternative accommodation/stall to the petitioner.

According to the petitioner he is doing business from about 18 years ago in front of Capitol Cinema Hall Mallital, Nainital with the perimission of Nagar Palika Parishad. The Nagar Palika Parishad has provided the alternative place to the petitioner and the petitioner was directed to do his business at the alternative place in stall no. 1-B in front of B.D. Pandey Hospital, Nainital. Thereafter they were removed from opposite to the B.D. Pandey Base Hospital, Nainital.

Learned counsel for the petitioners have referred to the portion of the order dated 27.05.2003 passed by this Court in P.I.L. no. 566 (M/B) 2001, the same is quoted below:-

"Learned counsel for Nagar Palika made a statement that vendors on the road are removed and after few hours, they again start their business at the same place. This happens because Nagar Palika has no Police force. The S.S.P. Nainital is directed to provide

necessary police force at the request of Nagar Palika. S.S.P., Nainital shall, himself or through any officer subordinate to him, control the police constables in their proper discharge of duties."

Counsel for the petitioner has submitted that the respondents forcibly restrained to the petitioner for doing business from the place, which has been given to the petitioners by the respondents in compliance of this Court's order and they have not providing any alternative place to the petitioner.

Counsel for the petitioners has submitted that the respondents have not taken any action in the representation dated 24.09.1998 of the petitioner for the alternative place, but till date no place has been allotted to the petitioner.

From time to time various orders were passed for providing alternative accommodation. One of the order passed by this Court on 19th March, 2004 was to the following effect:-

"On 28.11.2003, this Court direct that all the 20 applicants would file their affidavit stating that even if out of 20, a few are allotted the Khokhas, the remaining will not object. The affidavit from the 18 applicants have been filed before this Court. The applicants who are having their Khokhas are directed to make an aapplication before before the District Magistrate as a proposal for alternatives site and the District Magistrate will consider the same at the earliest as the season is likely to commence within few days.

List the case on 2.4.2004"

In supplementary affidavit the petitioner has stated in paragraph 12 as under:-

12. That it may be pointed out here that the petitioner's application for allotment of shop is pending with the respondents for the last number of years the respondents have not allotted any shop to the petitioner despite during this period of the pendency of the petitioner's allotment application, the respondents have constructed number of markets viz. New Palika Market, Market construction in front of Bhotia market etc, besides the various other splitted shops constructed and allotted to the various persons in spite of the pendency of the petitioner's application……"

Till date, it appears, no decision has taken place by the authorities concerned.

The matter is identical to the matter involved in writ petition no. 577 (M/B) 2001 and we have given sufficient guidelines with regard to providing alternative accommodation to the petitioners in

writ petition no. 577(M/B) 2001. However, considering the policy of the rehabilitation the Committee constituted for the purpose is directed to hear the parties concerned and make policy and provide adequate accommodation expeditiously for their rehabilitation who were evicted. The entire exercise has to be made within a period of one month.

Subject to these observations, the writ petition is disposed of.

(Rajesh Tandon, J.) **(M.M. Ghildiyal, J.)**

May 21, 2004
NCM:

HIGH COURT OF UTTARANCHAL AT-NAINITAL.

Modification Application no. 4109 of 2004

On Behalf of

1. Commissioner, Kumaon Division, Nainital,
2. District Magistrate, District Nainital,
3. Executive Engineer, P.W.D., Nainital

In
Writ Petition no. 471 (M/B) 2003

Nadim Shamsi Mutafuzil Ul Haq, …. Petitioner.

Vs.

Nagar Palika Parishad, Nainital,
And two others.. …. Respondents.

Sri B.D. Kandpal, learned Standing Counsel for the applicants,
None for the respondents.,

Coram:- Hon'ble M.M. Ghildiyal, J.
Hon'ble Rajesh Tandon, J.

PC:-

We have passed order in Writ Petition no. 471 (M/B) 2003 on 21st May 2004 keeping in view that the matter involved in the writ petition, was identical to the Writ Petition no. 577(M/B) 2001 which was also disposed of with the following directions:-

"*We, therefore, form a committee in order to rehabilitate the shopkeepers/Hawkers who were evicted in the course of eviction drive in pursuance to the order passed by this Court in P.I.L. no. 566 of 2001 pertaining to Nainital City. The Committee is constituted as under:-*

Chairman- *Commissioner of the Division.*

Members- *1. District Magistrate, Nainital*

2. Executive Engineer, P.W.D., Nainital.

We refer the matter to the constituted Committed, who shall hear the parties concerned and make policy and provide adequate accommodation expeditiously for their rehabilitation who were evicted. The entire exercise has to be made within a period of one month.

Subject to these observations, the writ petition is disposed of."

The present application has been filed for modification of the order dated 21st May 2004 with the request that Secretary, Lake Development Authority, Nainital and Executive Officer, Municipal Board, Nainital may be included as members of the committe for the rehabilitation of the petitioners as directed by this Court on 21st May 2004.

The prayer is innocuous. Accordingly we modify the order and include the Secretary, Lake Development Authority, Nainital and Executive Officer, Municipal Board, Nainital as the members of the Committee in order to rehabilitate the shopkeepers/Hawkers who were evicted in the course of eviction drive in pursuance to the order passed by this Court in P.I.L. no. 566 of 2001 pertaining to Nainital City.

Modification application is disposed of accordingly.

(Rajesh Tandon, J.) **(M.M. Ghildiyal, J.)**

September 18, 2004
NCM: